



[4310-10]

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

#### 43 CFR Part 2

[13XD4523WS DS10200000 DWSN00000.000000 WBS DP10202]

RIN 1093-AA19

### Freedom of Information Act Regulations

**AGENCY:** Office of the Secretary, Interior

**ACTION:** Final rule.

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**SUMMARY:** This rule revises the regulations that the Department of the Interior (Department) follows in processing records under the Freedom of Information Act. The revisions clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public.

**DATES:** This rule is effective on [**INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION**].

**FOR FURTHER INFORMATION CONTACT:** Cindy Cafaro, Office of the Executive Secretariat and Regulatory Affairs, 202-208-5342.

### SUPPLEMENTARY INFORMATION:

#### I. Why we're publishing this rule and what it does.

##### A. Introduction

In late 2012, the Department published a final rule updating and replacing the Department's previous Freedom of Information Act (FOIA) regulations. Since that time, in order to maintain the independence of the Office of Inspector General (OIG), the Department and the OIG have agreed to authorize the OIG to process their own FOIA appeals. Additionally, the Department has recently migrated its website to a new framework, leading to updated links. Finally, the Department has received feedback from its FOIA practitioners and requesters and identified areas where it is possible to further update, clarify, and streamline the language of some procedural provisions. Therefore, the Department is making the following changes:

- Section 2.1(e) is amended to identify the regulations applicable to Privacy Act requests.
- Section 2.5(d) is amended to provide more guidance on what happens when a request does not reasonably describe the records sought.
- Portions of § 2.6 are amended to make explicit that a fee waiver request is a valid way of responding to a request for additional fee information and that requesters may inform bureaus why they believe they are eligible for discretionary fee waivers, and to emphasize when fee issues must be resolved before processing will begin.
- A sentence is added to § 2.8(a) to require a bureau that cannot readily reproduce the requested record in the form or format requested to explain why it cannot.
- Section 2.9(b) is amended to remove a superfluous introductory phrase.
- Section 2.10 is amended to highlight the requirements a requester seeking expedited processing must meet and the consequences of not meeting those requirements.
- Section 2.11 is amended to reduce the suggested contact information provided by

requesters.

- Section 2.12(c) is amended to emphasize that reasonable efforts must be made to search for requested records and to clarify when searching for requested records in electronic form or format will not occur.
- A sentence is added to § 2.15(e) to require bureaus to provide more information to requesters when placing them in a different processing track than requested.
- Section 2.16(a) is amended to clarify and streamline discussion of when the time period for responding to a request begins and ends.
- The introductory language of § 2.19(a) is amended to clarify when bureaus may extend the basic time limit.
- Portions of § 2.20 are amended to make explicit that expedited processing requests are only appropriate before the bureau issues its final response; to require bureaus to provide more information to requesters when denying expedited processing requests; and to clarify that the portion of an appeal that relates to an expedited processing denial, rather than the entire appeal, will be processed ahead of other appeals.
- Section 2.22(c) and (d) is amended to clarify when records may be released to requesters.
- Section 2.23(a)(3) is amended to add a clarifying phrase.
- Section 2.24(b) is amended and expanded to require bureaus to provide more information to requesters in denial notifications.
- Section 2.25(c) is amended to clarify what information must be provided to requesters, and where, when portions of responsive records have been deleted.

- Section 2.26 and § 2.27(a) are amended to provide more information on when submitter notification is required.
- One word in § 2.27(b) is replaced to more closely track the language of Executive Order No. 12600, (52 FR 23781, published June 23, 1987).
- Section 2.28(a) is amended to clarify that a general description of the request would suffice for submitter notices published under § 2.27(b).
- Section 2.31(a)(1) and (2) are amended to clarify the information a submitter must provide when objecting to the release of responsive information under Exemption 4.
- Section 2.37(g) is added and § 2.49(a)(1) is amended so the concept that requesters generally will not be charged if the fee for processing their request is less than \$50 is introduced sooner.
- Section 2.37(h) is added to make the consequences of failure to pay bills for FOIA-related fees explicit.
- Section 2.37(i) is added to notify requesters they can seek assistance, when considering reformulating their request to meet their needs at a lower cost, from the bureau's designated FOIA contact or FOIA Public Liaison.
- A sentence is added to § 2.38(b) to require bureaus to provide more information to requesters when placing them in a different fee category than requested.
- Section 2.39 is amended to replace one word for the sake of grammatical consistency.
- Section 2.42(d) is amended to further discuss the impact of requester preferences for paper and/or electronic formats.
- Section 2.44(b) is amended to provide different examples of special services a

requester might have to pay for.

- The introductory language of §§ 2.45(a) and 2.48(a) is amended to clarify what a requester must demonstrate to be entitled to a fee waiver.
- Section 2.46(b) is amended to clarify when fee waiver requests may be made.
- Minor grammatical changes are made to § 2.47(a), (c), and (d) to allow a new § 2.47(e) to increase clarity and require bureaus to provide the requester with notice of anticipated fees when denying a request for a fee waiver.
- Section 2.48(a)(2)(v) is amended to note that representatives of the news media will be presumed to have the ability and intent to disseminate the requested information to a reasonably broad audience of persons interested in the subject.
- Section 2.49(c) is amended to allow requesters more flexibility in resolving fee issues.
- Portions of § 2.50 are amended to clarify discussion of advance payments.
- Section 2.51(b)(1), (b)(2), (b)(3), and (c) are amended to ensure consistent phrasing and to include minor, clarifying additions.
- Section 2.57(a)(5) and (a)(6) are amended to include minor, clarifying additions.
- Section 2.60 is amended to reflect that the FOIA Appeals Officer would no longer be the deciding official for FOIA appeals arising from OIG FOIA responses, and small portions of §§ 2.20(c), 2.24(b)(5), 2.47(d), 2.62, and 2.63 would also be amended to reflect this change.
- Section 2.62 is streamlined to follow the requirements of FOIA more closely.
- Section 2.66 is amended to provide more information on the role played by FOIA Public Liaisons.

- Section 2.68 is amended to reflect the new schedule number resulting from the National Archives and Records Administration’s recent update to the General Records Schedule pertaining to FOIA records and to add a reference to the Department’s Record Schedule pertaining to FOIA records.
- A word is added to the definition of “multitrack processing” in Section 2.70 to ensure it is consistent with Section 2.14.
- Sections 2.1(d), 2.1(g), 2.3(c), 2.21(a), 2.41(c), 2.59(a), 2.65, and 2.70 are amended to reflect updated website links.

On September 30, 2015, the Department published a proposed rule in the **Federal Register** (80 FR 58663) and requested comments over a 60-day period ending on November 30, 2015. All comments received were considered in drafting this final rule.

## **B. Discussion of Comments**

Four commenters responded to the invitation for comments, including one commenter from a subcomponent of a Federal agency and three commenters from non-Federal sources. Two of these commenters offered some substantive suggestions on specific existing provisions of the rule that are not being amended; these suggestions are outside the scope of this rulemaking and are not addressed below. While most of the commenters generally supported the proposed changes (and one “applaud[ed]” certain existing provisions), they identified twelve specific issues or recommendations related to the proposed rule, which the Department addressed as follows:

*The Final Rule Should Only Allow Requests for Clarification to be Sent by Email or Registered*

### *Mail*

One commenter suggested that § 2.5(d) be amended to require requests for clarification be sent only via email or registered mail so the agency can “satisfy itself that the request for additional material that was sent was actually received.” The Department has not adopted this suggestion as it is satisfied with the current flexibility in this area and does not want to create additional expenses and inflexibility.

### *The Final Rule Should Specify Response Deadlines for Responding to Requests for More Information on the Records Sought*

One commenter suggested that § 2.5(d) “should clarify whether the requester's 20-workday response deadline runs from the date of the Department's notice or from the date that the requester actually receives the Department's notice.” We agree and have modified our edits to this section accordingly and have made analogous edits and clarifications to §§ 2.49(c), 2.51(b)(1), 2.51(b)(2), 2.51(b)(3), and 2.51(c).

### *The Final Rule Should Add New Information About How Fee Information Affects the Processing of Requests*

One commenter suggested § 2.6(e) include a statement that “A denial of your waiver request and/or the amount you are willing to pay, will result in an automatic truncation of the process to comply with your FOIA request.” We do not agree with this statement, as it is not always true, and therefore have not adopted this suggestion. Another commenter suggested the Department revisit § 2.6(e) and provided examples of Department of Justice guidance on fee issues from 1983 and 2013. In response to this comment, the Department reviewed both the suggested

guidance and the Department of Justice’s FOIA regulations (amended in 2015) and added clarifying information to § 2.6(e) consistent with the Department of Justice’s FOIA regulations.

*The Final Rule Should Include Additional Language Related to Expedited Processing and Fees*

One commenter suggested adding language to §§ 2.10 and 2.20 explicitly stating that expedited requests do not incur additional fees. We understand the point of this suggestion, but feel it would not add clarity to the rule, especially as there is nothing in any section of the regulations that indicates making such a request would incur additional fees.

*The Final Rule Should Explicitly Solicit Cellphone Numbers*

One commenter suggested adding a specific reference to cellphone numbers to § 2.11. The Department has not adopted this suggestion. The existing reference to “daytime telephone numbers” that encompasses, but does not require, cellphone numbers, is sufficient.

*The Final Rule Should be Fair to the Requester*

One commenter suggested that the last sentence of § 2.12(c) “is not fair to the requester” and suggests it will be used in bad faith. The language in question is drawn from the Freedom of Information Act itself, and we believe it is fair; therefore this language has not been changed.

*The Final Rule Should Add a Reference to FOIA Public Liaisons to the Section on Basic Time Limits*

One commenter suggested adding information on seeking estimated completion dates from FOIA Public Liaisons to § 2.16(a), which explains the basic concept of basic time limits for



responding to requests. This suggestion does not seem to fit in this provision and would be confusing. We therefore decline to adopt it. Another commenter suggested that the language in § 2.16(a) was imprecise. We have carefully considered this suggestion, but believe the existing language is clear.

*The Final Rule's Requester Fee Category Discussion Should Discuss Appeals*

One commenter suggested § 2.38(b) specifically discuss whether the decision that the requester belongs in a specific category can be appealed. Our proposed modifications to § 2.57(a)(5) already do this very thing, so we decline to adopt this change.

*The Final Rule Should Clarify What Fees for Other Services Requesters Will Not Have to Pay*

Two commenters had suggestions concerning § 2.44(b). One commenter suggested noting that “conducting a search that requires the creation of a new computer search program” does not include extracting and compiling the data from an existing database using a query. As the rule is explicit that it applies only to locating records, we have not adopted this suggestion. Another commenter suggested that this provision explicitly exclude fees covered under § 2.42(d). As this section applies to requests for records in forms or formats that we don’t already maintain, we have not adopted this suggestion.

*The Final Rule Should Not be Vague*

One commenter stated § 2.46(b) was “vague” and wondered: “How can one know when the bureau has not completed processing a request? There should be a specific period (no of days), after which it is reasonable to expect that the agency is complying with the request, and therefore a fee waiver request would be too late. In such a situation, if without a fee waiver the requester

would opt for the request to be stopped, then there would not have been any man-hours already expended on fulfilling the request.” This commenter therefore suggested § 2.46(b) should include “a specific period (no of days), after which it is reasonable to expect that the agency is complying with the request and therefore a fee waiver request would be too late.” We believe that § 2.46(b) is not vague and provides requesters with as much flexibility in providing fee waiver requests as possible. We therefore decline to adopt this change, as it would negatively affect future requesters.

#### *The Final Rule Should Limit Modifications of Requests Related to Advanced Fees*

One commenter suggested appending “if you deem the adjudged fee to be beyond your means” at the end of § 2.50(c) because someone might reach some conclusion “that once an advance payment requirement is determined, then it follows that the requester is presumed unable to afford it.” We decline to adopt this change; we have deliberately given requesters the opportunity to modify their request even if they could pay the advance payment and we make no presumptions about a requester will be able to afford the advance payment.

#### *No Rule Should “Deny an Individual from Obtaining Personal Information about Themselves”*

One commenter’s entire comment was: “There must be no rules created that will deny an individual from obtaining personal information about themselves.” No changes have been made to the rule based on this general statement.

### **C. Technical and Procedural Comments**

One commenter noted National Archives and Records Administration’s recent update to the General Records Schedule pertaining to FOIA records resulted in a new schedule number. We have confirmed this and § 2.68 has been amended accordingly. Additionally, we have

slightly amended § 2.25(c) to more closely track the language of the FOIA itself.

Additionally, the Department made very minor clarifications in §§ 2.6(d), 2.11, 2.20(g), 2.48(b), and 2.60. In the interests of clarity and consistency, the Department also added phrases to the introductory text of § 2.6(b), a sentence to § 2.6(d), phrases to § 2.10, and phrases to §§ 2.48(a)(2)(v) and 2.48(b). Also in the interests of clarity and consistency, the Department added and deleted phrases from §§ 2.26, 2.27(a), and 2.47(d). Finally, upon further consideration, the Department has decided against amending § 2.50(a) and (b).

## **II. Compliance with laws and executive orders.**

### *1. Regulatory Planning and Review (Executive Orders 12866 and 13563).*

Executive Order (E.O) 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### *2. Regulatory Flexibility Act.*

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by the Department are nominal. Further, the “small entities” that make FOIA requests, as compared with individual requesters and other requesters, are relatively few in number.

*3. Small Business Regulatory Enforcement Fairness Act.*

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*4. Unfunded Mandates Reform Act.*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

*5. Takings (E.O. 12630).*

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

*6. Federalism (E.O. 13132).*

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It would not substantially and directly affect the relationship between the Federal and state governments. A federalism summary impact statement is not required.

*7. Civil Justice Reform (E.O. 12988).*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

*8. Consultation with Indian Tribes (E.O. 13175).*

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes. This rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

*9. Paperwork Reduction Act.*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*10. National Environmental Policy Act.*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of

1969 (NEPA) is not required. Pursuant to Department Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement “policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject late to the NEPA process, either collectively or case-by-case.”

*11. Effects on the Energy Supply (E.O. 13211)*

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This rule will not have a significant effect on the nation’s energy supply, distribution, or use.

**List of Subjects in 43 CFR Part 2**

Freedom of information

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Kristen J. Sarri  
Principal Deputy Assistant Secretary for Policy, Management, and Budget

For the reasons stated in the preamble, the Department of the Interior amends part 2 of title 43 of the Code of Federal Regulations as follows:

**PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY**

1. The authority citation for part 2 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

**Subpart A—INTRODUCTION**

2. Amend § 2.1:

a. In paragraph (d), the second sentence, by removing the website address “*http://www.doi.gov/foia/guidance.cfm*” and adding in its place the website address “*https://www.doi.gov/foia/news/guidance*”;

b. By revising paragraph (e); and

c. In paragraph (g), the first sentence, by removing the website address “*http://www.doi.gov/foia/libraries.cfm*” and adding in its place the website address “*http://www.doi.gov/foia/libraries*”.

The revision reads as follows:

## **§ 2.1 What should you know up front?**

\* \* \* \* \*

(e) The Department’s regulations for requests made under the Privacy Act of 1974, 5 U.S.C. 552a, are located at subpart K of this part.

\* \* \* \* \*

## **Subpart B—HOW TO MAKE A REQUEST**

### **§ 2.3—[Amended]**

3. Amend § 2.3(c), the second sentence, by:

a. Removing the website address “*http://www.doi.gov/foia/index.cfm*” and adding in its place the website address “*https://www.doi.gov/foia*”; and

b. Removing the website address “*http://www.doi.gov/foia/contacts.cfm*” and adding in its place the website address “*http://www.doi.gov/foia/contacts*”.

4. In § 2.5, revise paragraph (d) to read as follows:

## **§ 2.5 How should you describe the records you seek?**

\* \* \* \* \*

(d) If the bureau determines that your request does not reasonably describe the records sought, the bureau will inform you what additional information you need to provide in order to reasonably describe the records that you seek so the requested records can be located with a reasonable amount of effort. The bureau will also notify you that it will not be able to comply with your request unless the additional information it has requested is received from you in writing within 20 workdays after the bureau has requested it and that you may appeal its determination. If you receive this type of notification, you may wish to discuss it with the bureau's designated FOIA contact or its FOIA Public Liaison (see § 2.66 of this part). If the bureau does not receive your written response containing the additional information within 20 workdays after the bureau has requested it, the bureau will presume that you are no longer interested in the records and will close the file on the request.

5. Amend § 2.6 by revising paragraph (b) introductory text and paragraphs (b)(3), (d), and (e) to read as follows:

**§ 2.6 How will fee information affect the processing of your request?**

\* \* \* \* \*

(b) If the bureau anticipates that the fees for processing the request will exceed the amount you have agreed to pay, or if you did not agree in writing to pay processing fees or request a fee waiver and the bureau anticipates the processing costs will exceed \$50 (see § 2.37(g) of this part) or will exceed your entitlements (see § 2.39 of this part), the bureau will notify you:

\* \* \* \* \*

(3) That it will not be able to fully comply with your request unless you provide a fee waiver request and/or the requested written assurance or advance payment.



\* \* \* \* \*

(d) If you are seeking a fee waiver, your request must include a justification that addresses and meets the criteria in §§ 2.45 and 2.48 of this part. Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied. This allows the bureau to process the request for records while it considers your fee waiver request. You may also inform us of why you believe your request meets one or more of the criteria for a discretionary fee waiver under § 2.56 of this part.

(e) The bureau will begin processing your request only after all issues regarding fees are resolved.

\* \* \* \* \*

6. In § 2.8, add a sentence to the end of paragraph (a) to read as follows:

**§ 2.8 Can you ask for records to be disclosed in a particular form or format?**

(a) \* \* \* If the bureau cannot readily reproduce the record in that form or format, it must explain why it cannot.

\* \* \* \* \*

7. In § 2.9, revise paragraph (b) to read as follows:

**§ 2.9 What if your request seeks records about another person?**

\* \* \* \* \*

(b) The bureau can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

8. Revise § 2.10 to read as follows:

**§ 2.10 May you ask for the processing of your request to be expedited?**

You may ask for the processing of your request to be expedited. If you are seeking expedited processing, your request must include a justification that addresses and meets the criteria in § 2.20 of this part and includes the certification required at § 2.20(b)(2) of this part. Failure to provide sufficient justification or the required certification will result in a denial of the expedited processing request.

9. Revise § 2.11 to read as follows:

**§ 2.11 What contact information should your request include?**

A request should include your name and a way (such as a mailing or email address) for the bureau to send responsive records to you and/or to request additional information or clarification of your request. You may also wish to include a daytime telephone number (or the name and telephone number of an appropriate contact).

**Subpart C—PROCESSING REQUESTS**

10. In § 2.12, revise paragraph (c) to read as follows:

**§ 2.12 What should you know about how bureaus process requests?**

\* \* \* \* \*

(c) The bureau will make reasonable efforts to search for the requested records. As part of its reasonable efforts, the bureau will search paper and/or electronic records (for example, emails), as appropriate. The bureau will not search for records in an electronic form or format if these efforts would significantly interfere with the operation of the bureau's automated information system.

\* \* \* \* \*

**Subpart D—TIMING OF RESPONSES TO REQUESTS**

11. In § 2.15, add the following sentence to the end of paragraph (e) to read as follows:

**§ 2.15 What is multitrack processing and how does it affect your request?**

\* \* \* \* \*

(e) \* \* \* If you request placement in a particular processing track but the bureau places you in a different processing track, the bureau will provide you with an explanation of why you were not placed in the processing track you requested.

\* \* \* \* \*

12. In § 2.16, revise paragraph (a) to read as follows:

**§ 2.16 What is the basic time limit for responding to a request?**

(a) Ordinarily, the bureau has 20 workdays (including the date of receipt) to determine whether to comply with a request, but unusual circumstances may allow the bureau to take longer than 20 workdays (see §2.19 of this subpart).

\* \* \* \* \*

13. In § 2.19, revise paragraph (a) introductory text to read as follows:

**§ 2.19 When may the bureau extend the basic time limit?**

(a) The bureau may extend the basic time limit, if unusual circumstances exist, by notifying you in writing of:

\* \* \* \* \*

14. In § 2.20, revise paragraphs (c), (f), and (g) to read as follows:

**§ 2.20 When will expedited processing be provided and how will it affect your request?**

\* \* \* \* \*

(c) You may ask for expedited processing of your request by writing to the appropriate FOIA contact in the bureau that maintains the records requested any time before the bureau

issues its final response to your request. When making a request for expedited processing of an administrative appeal, submit the request to the appropriate deciding official for FOIA appeals.

\* \* \* \* \*

(f) If expedited processing is denied, the bureau will:

(1) Inform you of the basis for the denial, including an explanation of why the expedited processing request does not meet the Department's expedited processing criteria under this section; and

(2) Notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(g) If you appeal the bureau's expedited processing decision, that portion of your appeal (if it is properly formatted under § 2.59 of this part) will be processed before appeals that do not challenge expedited processing decisions.

\* \* \* \* \*

## **Subpart E—RESPONSES TO REQUESTS**

### **§ 2.21—[Amended]**

15. In § 2.21(a), the second sentence, remove the website address “<http://www.doi.gov/foia/news/guidance/index.cfm>” and add in its place the website address “<https://www.doi.gov/foia/news/guidance>”.

16. Amend § 2.22:

- a. By revising paragraph (c); and
- b. In paragraph (d), by adding the words “released or” after the words “the records will be”.

The revision reads as follows:

## **§ 2.22 How will bureaus grant requests?**

\* \* \* \* \*

(c) The bureau will release records (or portions of records) to you promptly upon payment of any applicable fees (or before then, at its discretion).

\* \* \* \* \*

## **§ 2.23—[Amended]**

17. In § 2.23(a)(3), add the words “and/or control” after the words “bureau’s possession”.

18. In § 2.24, revise paragraph (b) to read as follows:

## **§ 2.24 How will the bureau deny requests?**

\* \* \* \* \*

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial, along with an office phone number or email address;

(2) A statement of the reasons for the denial;

(3) A reference to any FOIA exemption applied by the bureau to withhold records in full or in part;

(4) An estimate of the volume of any records withheld in full or in part (for example, by providing the number of pages or some other reasonable form of estimation), unless an estimate would harm an interest protected by an exemption used to withhold the records;

(5) The name and title of the Office of the Solicitor or Office of General Counsel attorney consulted (if the bureau is denying a fee waiver request or withholding all or part of a requested record); and

(6) A statement that the denial may be appealed under subpart H of this part and a description of the procedures in subpart H of this part.

19. In § 2.25, revise paragraph (c) to read as follows:

**§ 2.25 What if the requested records contain both exempt and nonexempt material?**

\* \* \* \* \*

(c) If technically feasible, indicating the amount of information deleted and the FOIA exemption under which the deletion was made at the place in the record where the deletion was made.

**Subpart F—Handling Confidential Information**

20. Revise § 2.26 to read as follows:

**§ 2.26 May submitters of possibly confidential information designate information as confidential when making Departmental submissions?**

(a) The Department encourages, but does not require, submitters to designate confidential information in good faith (in other words, to identify specific information as information the submitter considers protected from disclosure under Exemption 4 of the FOIA, found at 5 U.S.C. 552(b)(4)), at the time of submission or reasonably soon thereafter.

(b) The designations discussed in paragraph (a) of this section assist the bureau in identifying what information obtained from the submitter is possibly confidential and triggers the requirement for bureau-provided notifications under § 2.27(a)(1) of this subpart.

21. Amend § 2.27:

- a. By revising paragraph (a); and
- b. In paragraph (b), by removing the word “large” and adding in its place the word “voluminous”.

The revision reads as follows:

**§ 2.27 When will the bureau notify a submitter of a request for their possibly confidential information?**

(a) Except as outlined in § 2.29 of this subpart, a bureau must promptly notify a submitter in writing when it receives a FOIA request if:

(1) The requested information has been designated by the submitter as confidential information under § 2.26(a) of this subpart; or

(2) The requested information has not been designated as confidential information by the submitter under § 2.26(a) of this subpart, but the bureau identifies it as possibly confidential information.

\* \* \* \* \*

22. In § 2.28, revise paragraph (a) to read as follows:

**§ 2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?**

\* \* \* \* \*

(a) Either a copy of the request, the exact language of the request, or (for notices published under § 2.27(b) of this subpart) a general description of the request;

\* \* \* \* \*

23. In § 2.31, revise paragraphs (a)(1) and (2) to read as follows:

**§ 2.31 What must a submitter include in a detailed Exemption 4 objection statement?**

(a) \* \* \*

(1) Whether the submitter provided the information voluntarily and, if so, how disclosure will impair the Government's ability to obtain similar information in the future and/or how the

information fits into a category of information that the submitter does not customarily release to the public;

(2) Whether the Government required the information to be submitted, and if so, how disclosure will impair the Government's ability to obtain similar information in the future and/or how substantial competitive or other business harm would likely result from disclosure; and

\* \* \* \* \*

## **Subpart G—Fees**

24. In § 2.37, add paragraphs (g), (h), and (i) to read as follows:

### **§ 2.37 What general principles govern fees?**

\* \* \* \* \*

(g) If the fee for processing your request is less than \$50, you will not be charged unless multiple requests are aggregated under § 2.54 of this subpart to an amount that is \$50 or more.

(h) If you fail to pay any FOIA-related fee within 30 calendar days of the date of billing, the processing of any new or ongoing requests and/or appeals from you shall ordinarily be suspended.

(i) If you would like to reformulate your request so it will meet your needs at a lower cost, you may wish to seek assistance from the bureau's designated FOIA contact or its FOIA Public Liaison (see § 2.66 of this part).

25. In § 2.38, add the following sentence to the end of paragraph (b) to read as follows:

### **§ 2.38 What are the requester fee categories?**

\* \* \* \* \*

(b) \* \* \* If you request placement in a particular fee category but the bureau places you in a different fee category, the bureau will provide you with an explanation of why you were not



placed in the fee category you requested (for example, if you were placed in the commercial use requester category rather than the category you requested, the bureau will describe how the records would further your commercial, trade, or profit interests).

\* \* \* \* \*

#### **§ 2.39—[Amended]**

26. In the table at § 2.39(a), remove the word “non-commercial” and add in its place the word “noncommercial”.

#### **§ 2.41—[Amended]**

27. In § 2.41(c), remove the website address “*http://www.doi.gov/foia/fees-waivers.cfm*” and add in its place the website address “*http://www.doi.gov/foia/fees-waivers*”.

28. In § 2.42, revise paragraph (d) to read as follows:

#### **§ 2.42 What duplication fees will you have to pay?**

\* \* \* \* \*

(d) If the bureau must scan paper records to accommodate your preference to receive records in an electronic format or print electronic records to accommodate your preference to receive records in a paper format, you will pay both the per page amount noted in Appendix A to this part and the time spent by personnel scanning or printing the requested records. For each quarter hour spent by personnel scanning or printing the requested records, the fees will be the same as those charged for a search under §2.41(b) of this subpart.

29. In § 2.44, revise paragraph (b) to read as follows:

#### **§ 2.44 What fees for other services will you have to pay?**

\* \* \* \* \*

(b) Examples of these services include providing multiple copies of the same record, converting records that are not already maintained in a requested format to the requested format, obtaining research data under §2.69 of this part, sending records by means other than first class mail, and conducting a search that requires the creation of a new computer search program to locate the requested records.

\* \* \* \* \*

#### **§ 2.45—[Amended]**

30. In § 2.45, in paragraph (a) introductory text, remove the words “under the factors” and add in their place the words “by addressing and meeting each of the criteria”.

31. In § 2.46, revise paragraph (b) to read as follows:

#### **§ 2.46 When may you ask the bureau for a fee waiver?**

\* \* \* \* \*

(b) You may submit a fee waiver request at a later time if the bureau has not yet completed processing your request.

32. Amend § 2.47:

a. In paragraph (a), by removing the period at the end of the paragraph and adding in its place a semicolon;

b. In paragraph (c), by removing the word “and” at the end of the paragraph;

c. In paragraph (d), by removing the words “to the FOIA Appeals Officer, under the procedures in § 2.57 of this part, within 30 workdays after” and adding in their place the words “under subpart H of this part and a description of the requirements set forth therein, within 30 workdays from” and removing the period at the end of the paragraph and adding in its place the word “; and”; and

d. Adding paragraph (e).

The addition reads as follows:

**§ 2.47 How will the bureau notify you if it denies your fee waiver request?**

\* \* \* \* \*

(e) Your anticipated fees, in accordance with § 2.49 of this subpart.

33. Amend § 2.48 by revising paragraph (a) introductory text and adding a sentence to the end of paragraph (a)(2)(v) to read as follows: “”

**§ 2.48 How will the bureau evaluate your fee waiver request?**

(a) In deciding whether your fee waiver request meets the requirements of § 2.45(a)(1) of this subpart, the bureau will consider the criteria listed in paragraphs (a)(1) through (a)(4) of this section. You must address and meet each of these criteria in order to demonstrate that you are entitled to a fee waiver.

\* \* \* \* \*

(2) \* \* \*

(v) \* \* \* If we have categorized you as a representative of the news media under § 2.38, we will presume you have this ability and intent.

\* \* \* \* \*

34. In § 2.49, revise paragraphs (a)(1) and (c) to read as follows:

**§ 2.49 When will you be notified of anticipated fees?**

(a) \* \* \*

(1) The anticipated fee is less than \$50 (see § 2.37(g) of this subpart).

\* \* \* \* \*

(c) If the bureau does not receive your written response containing the additional information that resolves any fee issues, in accordance with paragraphs (b)(2) and/or (b)(4) of this section, within 20 workdays after the bureau has requested it, the bureau will presume that you are no longer interested in the records and will close the file on the request.

\* \* \* \* \*

35. In § 2.50, revise paragraphs (c) and (d) to read as follows:

**§ 2.50 When will the bureau require advance payment?**

\* \* \* \* \*

(c) When the bureau notifies you that an advance payment is due under paragraph (a) of this section, it will give you an opportunity to reduce the fee by modifying the request.

(d) Your payment of the funds you owe the bureau for work it has already completed before records are sent to you is not an advance payment under paragraph (a) of this section.

\* \* \* \* \*

**§ 2.51—[Amended]**

36. Amend § 2.51:

a. In paragraph (b)(1), by adding the words “after the bureau has requested the additional clarification” after the words “within 20 workdays”;

b. In paragraph (b)(2), by adding the words “after the bureau has requested the additional clarification” after the words “within 20 workdays”;

c. In paragraph (b)(3), by removing the words “hears from you within 20 workdays” and add in their place the words “receives a written response from you within 20 workdays after the bureau has requested the additional clarification”; and

d. In paragraph (c), by adding the words “after the bureau has requested the additional clarification” after the words “within 20 workdays”.

## **Subpart H—ADMINISTRATIVE APPEALS**

### **§ 2.57—[Amended]**

37. Amend § 2.57:

a. In paragraph (a)(5), by adding the words “or you have been placed in the wrong fee category” after the word “calculated”; and

b. In paragraph (a)(6), by adding the words “your request for” after the word “denied”.

### **§ 2.59—[Amended]**

38. In § 2.59, in paragraph (a), the first sentence, remove the website address “*http://www.doi.gov/foia/appeals.cfm*” and add in its place the website address “*http://www.doi.gov/foia/appeals*”.

39. Revise § 2.60 to read as follows:

### **§ 2.60 Who makes decisions on appeals?**

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals that do not appeal a decision of the Office of Inspector General.

(b) The General Counsel is the deciding official for FOIA appeals that appeal a decision of the Office of Inspector General.

(c) When necessary, the appropriate deciding official for FOIA appeals will consult other appropriate offices, including the Office of the Solicitor or Office of General Counsel for denials of records and fee waivers.

(d) The deciding official for FOIA appeals normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

40. Revise § 2.62 to read as follows:

**§2.62 When can you expect a decision on your appeal?**

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of §2.59 of this subpart.

(b) If the Department is unable to reach a decision on your appeal within the given time limit for response, the appropriate deciding official for FOIA appeals will notify you of your statutory right to seek review in a United States District Court.

**§ 2.63—[Amended]**

41. In § 2.63, in paragraphs (b) and (c), remove the words “FOIA Appeals Officer” and add in their place the words “appropriate deciding official for FOIA appeals”.

**Subpart I—GENERAL INFORMATION**

**§ 2.65—[Amended]**

42. In § 2.65, the first sentence, remove the website address “*http://www.doi.gov/foia/libraries.cfm*” and add in its place the website address “*http://www.doi.gov/foia/libraries*”.

43. In § 2.66, revise paragraph (a) to read as follows:

**§ 2.66 What are public liaisons?**

(a) Each bureau has a FOIA Public Liaison who can assist requesters who have concerns about the service they received when seeking records or who are seeking assistance under § 2.3(d) or § 2.37(i) of this part.

\* \* \* \* \*

**§ 2.68—[Amended]**

44. Amend § 2.68:

a. In paragraph (a), by removing the number “14” and adding its place the number “4.2” and adding the phrase “, such as DAA-0048-2013-0001” to the end of the paragraph; and

b. In paragraph (b), by removing the number “14” and adding its place the number “4.2” and adding the phrase “, such as DAA-0048-2013-0001” to the end of the paragraph.

**§ 2.70—[Amended]**

45. Amend § 2.70:

a. In the definition of *Bureau*, by removing the website address “<http://www.doi.gov/foia/contacts.cfm>” and adding in its place the website address <http://www.doi.gov/foia/contacts>; and

b. In the definition of *Multitrack processing*, the second sentence, by adding the word “ordinarily” after the word “are”.

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